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ATTORNEYS FOR PLAINTIFF: FRANCO B. BRESSANUTTI AND
IRENE BRESSANUTTI

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FRANCO B. BRESSANUTTI,	)	Case No.: 10cv1922-MMA
IRENE BRESSANUTTI,)	
	)	NOTICE OF MOTION FOR ORDER
	)	REMANDING THE CASE TO
	)	STATE COURT AND FOR AN
PLAINTIFF,	)	ORDER FOR PAYMENT OF COSTS
	)	AND ATTORNET FEES
VS.)	
	)	Date: November 16, 2010
	)	Time: 2:30p.m.
ADVANTA BANK, PHILLIPS AND	)	Place: Courtroom 5
COHEN ASSOCIATES, LTD.,	)	Judge: Hon. Michael M. Anello
DOES 1 THROUGH 100,)	
INCLUSIVE,)	
)	
DEFENDANT)	

I, WILLIAM JAMES CAMPBELL, declare:

1 1.I am an attorney duly licensed to practice law
2 before all courts of the State of California. I
3 represent Ricardo G. Dagumo on behalf of The Iniguez
4 Law Firm, P.C. in this matter. This declaration is
5 submitted in support of Plaintiff's motion for order
6 remanding this case to state court and for an order for
7 payment of costs and attorneys fees.

8 The following facts are within my personal
9 knowledge and, if called as a witness herein, I can and
10 will competently testify thereto.

11 2.Plaintiffs are Franco B. Bressanutti and Irene
12 Bressanutti; Defendants are Advanta Bank and Phillips
13 and Cohen Associates, LTD.

14 3.On July 30, 2010 Plaintiff sued Defendants Advanta
15 Bank and Phillips and Cohen Associates, LTD. for
16 Violation of the California Rosenthal Fair Debt
17 Collections Practices Act and the Federal Fair Debt
18 Collections Practices Act.

19 4.The Lawsuit was originally filed in the Superior
20 Court of California County of San Diego and was given
21 case number 37-2010-00097041-CU-MC-CTL.

22 5.Defendant Phillips & Cohen Associates, LTD. was
23 personally served on August 13, 2010. (See Exhibit "A"
24 attached to this motion).

25 6.Defendant Advanta Bank was personally served on
26 August 13, 2010. (See Exhibit "B" attached to the
27 motion).

1 7. On September 13, 2010 Defendant Phillips and Cohen
2 Associates, LTD. served the notice on Plaintiff's
3 counsel. However, the notice was not filed with the
4 court until September 14, 2010. (see Exhibit "B"
5 attached to this motion).

6 8. In Defendant Phillips and Cohen Associates, LTD.'s
7 notice of removal Defendant Phillips and Cohen
8 Associates, LTD. stated "Defendant Phillips & Cohen
9 Associates, LTD. is informed and believes that the
10 service on Defendant Advanta Bank Corp. defective and
11 the FDIC has not been served with the complaint in this
12 matter."

13 9. Not only was Defendant Advanta Bank served by
14 Plaintiff's counsel, I, spoke to Jennan Shemise, Esq.
15 senior attorney for the FDIC legal Division on
16 September 9, 2010. Jennan Shemise made contact with me
17 because she had the complaint and wanted to discuss
18 settlement.

19 10. The Notice of Removal is defective under 28
20 U.S.C. §1446 because one of the individually named
21 Defendant, Advanta Bank has not joined in the removal.

22 11. The Notice of Removal is defective because
23 Defendant Phillips and Cohen Associates, LTD. filed the
24 Notice of Removal on Plaintiff 31 days after the
25 original complaint was served on Defendant Phillips and
26 Cohen Associates, LTD.
27
28

1 12. The State of California has a vital state
2 interest in both enforcing the Rosenthal Fair Debt
3 Collections Practices Act and enforcing Contracts
4 entered into in the State of California.

5 13. The Federal Fair Debt Collections Practices Act
6 itself recognizes the states interest by allowing each
7 state to adopt its own Debt Collection Regulations.
8 (See 15 U.S.C. §1692n).

9 14. Removal would result in needless intervention
10 by the federal courts and needless conflict with the
11 State of California's administration of its own
12 pervasive regulatory scheme for regulating debt
13 collectors.

14 15. The Court should remand this case back to the
15 California Superior Court on the grounds that all the
16 Defendants were not properly joined, the Notice of
17 Removal was filed 31 days after Defendant Philips and
18 Cohen Associates, LTD. was served the original
19 complaint, and based on abstention principles.

20 16. Plaintiffs further move the Court to order the
21 payment to Plaintiff by the removing Defendants of all
22 costs, including attorneys fees, incurred by reason of
23 the removal proceeding.

24 17. I have had to research law and draft this
25 motion. In all I have expended 3 hours in pursuit of
26 this matter. Therefore, Plaintiff requests that
27 Defendant, Phillips and Cohen Associates, LTD. be
28

1 ordered to pay monetary sanctions to The Iniguez Law
2 Firm, P.C. in the sum of \$600.00.
3

4 I declare under penalty of perjury under the laws of
5 the State of California and the United States of
6 America that the forgoing is true and correct.
7
8
9
10

11 Dated: September 17, 2010

s/ William J. Campbell
William J. Campbell